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EXAMINER

WENDELL, ANDREW

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAWRENCE J. MERBOTH and PENGFEI ZHU

Appeal 2009-012518
Application 10/799,815
Technology Center 2600

Before ALLEN R. MacDONALD, DEBRA K. STEPHENS and
ERIC B. CHEN, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-6 and 8-21. Claims 7 and 22 have been indicated to be allowable if rewritten in independent form. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Exemplary Claim(s)

Exemplary claim 1 under appeal reads as follows:

1. A device for allocating power comprising:
 - a power sharing module configured to receive a plurality of signals corresponding to at least one predicted power allocation and at least one current power allocation and to determine from the plurality of signals whether a first industry standard wireless system corresponding to a first wireless service has un-utilized transmission power;
 - a scheduler configured to receive an indication to allocate the un-utilized transmission power from the first wireless service of the first industry standard wireless system to a second wireless service of a second industry standard wireless system and utilize the indication to allocate the unutilized transmission power for the second wireless service; and
 - wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems.

*Rejections on Appeal*¹

The Examiner rejected claims 1, 6, 13, and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mantha (US 2004/0023622 A1) and Lachtar (US2003/0125039 A1).

The Examiner rejected claims 2-5, 14-16, and 21 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mantha, Lachtar, and Jeon (US 2004/0253928 A1).

The Examiner rejected claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mantha, Lachtar, and Kang (US 2001/0016503 A1).

The Examiner rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mantha, Lachtar, Kang, and Hongo (US 2003/0022639 A1).

The Examiner rejected claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Mantha, Lachtar, Kang, and Jeon.

Appellants' Contentions

1. Appellants contend that the Examiner erred in rejecting claim 1 because the Examiner has not set forth an articulated reasoning with a rational underpinning to support the conclusion of obviousness. (App. Br. 11).

¹ Separate patentability is not argued for claims 3-22, 27, and 28. "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." 37 C.F.R. § 41.37(c)(1)(vii)(last sentence). Further, merely restating with respect to a second claim an argument, previously presented with respect to a first claim, is not an argument for separate patentability of the two claims.

2. Appellants also contend that the Examiner erred in rejecting claim 1 because:

Contrary to the assertion of the Examiner, multiple base station controllers, as set forth in Lachtar, each utilizing a single industry standard wireless system in distinct coverage areas cannot reasonably be considered to be the same as a first industry standard wireless system and a second industry standard wireless system as distinct industry standard wireless systems, as recited in independent claims 1, 13, and 19. Indeed, no support for such an interpretation can be found in either the specification of the instant application or in the cited prior art and the Examiner has failed to show any other source that supports the assertion that one of ordinary skill in the art could interpret "distinct industry standard wireless systems" as referring to distinct coverage areas. As such, Appellants respectfully assert that one of ordinary skill in the art would not interpret "distinct industry standard wireless systems" as referring to multiple base stations with distinct coverage areas.

(App. Br. 13-14)(emphasis omitted).

3. Appellants further contend that the Examiner erred in rejecting claim 1 because:

Assuming arguendo that BSC 104 and BTS 108a&b as well as BSC 106 and BTS 112a&b can be construed as first and second industry wireless systems, there is no teaching in the Lachtar reference of allocating transmission power or providing an indication to allocate non-utilized transmission power from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19.

(App. Br. 15)(emphasis omitted).

4. Appellants contend that the Examiner erred in rejecting claim 6 because “the cited sections of the Mantha reference, as well as the remainder of the Mantha reference, fail to teach allocating the un-utilized transmission power within a 2 power control group interval.” (App. Br. 16) (emphasis omitted).

5. Appellants repeat contentions 1-4 or make similar contentions as to the rejections of claims 2, 8, 9, and 11. (App. Br. 17-26).

Issue on Appeal

Did the Examiner err in rejecting claims 1-6 and 8-21 as being obvious because Mantha, Lachtar, Kang, Jeon, and Hongo fail to teach or suggest claim limitations at issue?

ANALYSIS

We have reviewed the Examiners’ rejections in light of Appellants’ arguments (Appeal Brief and Reply Brief) that the Examiner has erred.

We disagree with Appellants’ conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief. We concur with the conclusions reached by the Examiner.

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1-6 and 8-21 as being unpatentable under 35 U.S.C. § 103(a).

(2) Claims 1-6 and 8-21 are not patentable.

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DECISION

The Examiner's rejections of claims 1-6 and 8-21 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD